

## FEE REPORT FORM

Department of Environmental Protection  
Agency

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Date

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### FEE COLLECTIONS:

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	<u>Prior Year</u>	<u>Current Year</u>	<u>Projected</u>
	FY 2006	FY 2007	FY 2011
Current	\$705,750	\$635,750	
Proposed			\$7,573,200

### FEE TITLE AND RATE:

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	<u>NPDES Stormwater Construction Permit</u>	<u>Erosion &amp; Sediment Control Permit</u>
Current:		
General Permit:	\$ 250	\$ 500
Individual Permit:	\$ 500	\$ 500
Proposed:		
General Permit:	\$ 500	\$ 500
Individual Permit:	\$1,500	\$1,500
Disturbance Fee:	\$ 100/ac	\$ 100/ac

## **FEE OBJECTIVE:**

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The existing permit fee for the Chapter 102 program (including both Erosion and Sediment Control (E&S) and NPDES Permits) do not currently offset the costs to implement the program. The permit fees established under this rulemaking have been developed to offset the costs to the Department to administer the program related to permit reviews, inspections, technical assistance, and program oversight. It cannot be determined if they will adequately offset additional compliance/enforcement activities, training or associated management tasks for the Department or conservation districts. Additional accounting procedures are needed for a more detailed analysis. Permitting data was extracted from eFACTS and annual reports from delegated county conservations districts and DEP Regional Offices for 2006, 2007, and 2008 as a starting point for estimating what revenue new fees may provide.

## **FEE RELATED ACTIVITIES AND COSTS:**

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Examples of Chapter 102 program activities include:

Training – The Department conducts at a minimum annual training for regional staff and conservation district staff. Additionally, the Department conducts localized training and regional meetings to address specific needs of the conservation districts and DEP regions.

Permit Review – The Department and conservation districts conduct erosion control plan and post construction stormwater management plan reviews under two categories of permits: NPDES permits (delegated by EPA to DEP to meet federal Clean Water Act) and state erosion and sediment control (E&S) permits which are authorized under the Pennsylvania Clean Streams Law. Reviews include an administrative completeness review and a technical review to ensure the plans have been designed in accordance with Chapter 102 and other related Department regulations.

Inspections – The Department and conservation districts conduct reviews at the beginning and end of earth disturbance activities, as well as periodic inspections throughout the term of permit coverage. Inspections require the completion of an inspection report and follow up to ensure any violations were addressed.

Program oversight – The Department delegates many responsibilities of the Chapter 102 program to the conservation districts. In order to ensure that districts are meeting the obligations of the delegation agreement, the Department conducts periodic reviews of district operations. This involves a file review of issued permits and the accompanying plans along with site visits to conduct field inspections that verify plan implementation.

Compliance – The Department seeks compliance with Chapter 102 through plan reviews and site inspections. The Department first seeks to gain compliance through voluntary participation by permittees, this has proven to be the most cost effective and expedient approach. When this is not achievable the Department takes increasing steps towards compliance from issuing Notices of Violation to taking penalty actions.

## **ANALYSIS:**

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To implement the Chapter 102 program, the costs will vary depending upon the number of projects permitted in a given year. The fee increase is an attempt to better meet the needs of the Chapter 102 program. While the permit fees have been chosen to assume the cost of implementation from application submittal to permit termination, the increase may not meet the needs of the Chapter 102 program. Some conservation districts may still need to charge an additional review fee and the increase may not meet all of the funding needs of the Department. Under the Conservation District Law (3 P.S. §859(2)), districts can charge additional fees to meet their increasing costs and have been charging review fees above and beyond the permit filing fee. Additional time accounting procedures must be developed and utilized to adequately identify staff time spent on all related program activities to properly distribute those costs to appropriate fee categories.

It is estimated that the proposed fees will cover the cost for Chapter 102 program activities identified above focusing on the permitting, inspection and technical assistance components of the program. The vast majority of activities regulated by this Chapter are permitted under the NPDES Stormwater Construction Permitting program. Currently the fees are \$250 for a general permit and \$500 for an individual permit. These fees have not been increased since 2000. The Department does not anticipate that conservation districts delegated the administration of the program will experience any decrease in revenue based from fees under this rulemaking. In addition, these increased permit application fees are not intended to supersede conservation district's ability to levy fees under the authority of the Conservation District Law. Based on data for 2006, 2007 and 2008, the conservation districts collect an annual average \$4,674,525 in plan review fees. The Conservation District Fund Allocation Program (CDFAP) also provides revenue to conservation districts to partially cover the cost of technical positions to implement the program.

Fiscal analysis clearly identifies the need for additional permit fees to continue administration of Chapter 102 in the Commonwealth. The estimated cost to administer the Chapter 102 program for the first year, fiscal year 2011/2012 is \$7,814,080. The average number of permittees over the three year period of 2006, 2007 and 2008 were 412 Individual NPDES Stormwater Construction Permits, 2079 General NPDES Stormwater Construction Permits and 558 E&S Permits each year which includes one year of record for E&S Permits associated with oil & gas activities. It is likely that a number of permittees submitted for more than one of the permits included in the total, however, if each permit is counted separately, the total number of permit applicants could be expected to be approximately 2,463 per year, not including the expected increase from oil & gas activities. If the Department considers E&S permits from oil and gas activities added in, the expected combined total is about 3,000 permits each year issued through the E&S and NPDES Stormwater Construction programs. Based on these annual permit number average and the annual average disturbed acres for this time frame and projecting these averages with an associated activity cost due to the proposed regulations, the average annual projected revenue from permit fees for this program is \$7,573,200. Thus the projected amount collected in revenue does not cover the estimated cost of the program.

Program permits are represented by 12% from governmental units 8% from state agencies and the remaining 80% represents the private portion of the regulated community. The proposed revisions to the regulation will increase program permit fees from an average annual \$692,200 (\$164,800 NPDES IPs plus \$527,400 GPs) in existing fees to \$6,058,560 in proposed new fees (\$494,400 base NPDES Stormwater Construction IP fee plus \$1,054,780 GPs plus \$4,509,400 disturbance fee) to the private sector. Local governments will see an average annual increase from \$103,830 (\$24,720 NPDES IPs plus \$79,110 GPs) to \$908,784 in proposed new fees (\$74,160 base NPDES Stormwater Construction IP fee plus \$158,220 GPs plus \$676,400 disturbance fee). State government could potentially see an average annual increase from \$69,220 (\$16,480 NPDES IPs plus \$52,740 GPs) to \$605,856 in proposed new fees (\$49,440 base NPDES Stormwater Construction IP fee plus \$105,480 GPs plus \$450,900 disturbance fee) but will receive revenue of \$7,573,200 annually associated with the Chapter 102 Erosion and Sediment Control Program.

## **RECOMMENDATION AND COMMENT:**

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This rulemaking for Chapter 102 sets forth the requirements for earth disturbance activities to minimize erosion and sedimentation and manage stormwater. The Department is proposing an increased fee for activities requiring a permit.

At least every three years, the Department will evaluate and recommend any necessary regulatory changes to the fees in this section to the Environmental Quality Board to address any disparity between program income generated by the fees and program costs. The regulatory amendment will be based upon an evaluation of the NPDES and E&S program fees income and the Department's costs of administering the NPDES and E&S programs.

The Agriculture Advisory Board (AAB) and the Water Resources Advisory Committee (WRAC) held meetings on the dates listed below to review the Department's proposed drafts of the Chapter 102 regulations. Both committees provided invaluable advice and insight to the Department during these meetings. The Department considered all and agreed to many of the recommendations made by the AAB and WRAC. The Department revised the permit fee section (102.6) to provide for a restructured permit fee that now includes lower general and individual permit administrative filing "base" fees as well as a per acre disturbance fee in response to public comments.

Proposed Rulemaking:

- AAB :
  - February 21, 2007 Overview of proposed revisions
  - October 10, 2007 Overview of proposed revisions
  - December 19, 2007 Discussion of proposed draft language for agricultural activities
  - April 15, 2009 Consideration of Proposed Chapter 102 rulemaking
  
- WRAC:

- January 10, 2007 Overview of proposed revisions
- January 9, 2008 Overview of proposed revisions
- July 22, 2008 Overview of riparian forest buffers
- February 25, 2009 Overview of proposed permit-by-rule
- April 8, 2009 Consideration of Proposed Chapter 102 rulemaking
- April 23, 2009 Special Meeting – continuation of proposed Chapter 102
- April 29, 2009 Second Special Meeting – continuation of proposed Chapter 102 (No quorum of WRAC)

Final Rulemaking:

- AAB:
  - February 17, 2010 Overview of proposed final rulemaking
- WRAC:
  - February 19, 2010 Overview of proposed final rulemaking
  - March 17, 2010 Special Meeting – Consideration of Chapter 102 final rulemaking; approved with comments.